



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Ranco Construction, Inc.
File: B-246345
Date: February 26, 1992

Robert Barry, Treasurer, Ranco Construction, Inc.,
protester.
Robert E. Beeton for the agency.
Daniel Schwimer, Esq. and Robert G. Crystal, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

A late bid delivered by Federal Express at the installation
more than 4 hours prior to bid opening may be considered
where government action was paramount cause of lateness and
the integrity of the system would not be compromised.

DECISION

Ranco Construction, Inc. (Ranco), protests the award of a
contract by the Department of Veterans Affairs (VA) Medical
Center to Gayle Electric Company (Gayle). Ranco, the second
low bidder, contends that the low bid of Gayle was
improperly accepted by the VA because it was not received by
the contracting officer until the next working day after bid
opening, through no fault of the government, and it did not
comply with mailing requirements of the Federal Acquisition
Regulation (FAR).

We deny the protest.

Invitation for bids (IFB) No. 642-71-91, issued by the VA
for installation of smoke dampers, established that bids
were due on Friday, August 9, 1991, at 2:00 P.M., but left
blank the box indicating where bids were to be addressed and
did not indicate where hand-carried bids were to be
delivered. The IFB did, however, contain the following
information in the box entitled "Issued By":

Contracting Officer
VA Medical Center
University and Woodland Avenue
Philadelphia, PA 19104.

Ranco's bid and one other were received by the contracting officer prior to 2:00 P.M., August 9, 1991. Gayle sent its bid by Federal Express to the contracting officer.

The Federal Express package was delivered to the VA Medical Center, Philadelphia, at 9:37 A.M. on Friday, August 9, 1991, in sufficient time to be delivered to the bid opening site before 2:00 P.M. Earl Dozier, the Chief of Supply & Distribution, who accepted the package, saw that it was clearly marked as containing a sealed bid and instructed a warehouse employee to carry the bid to the contracting officer. The employee failed to expedite delivery of the package as instructed and instead placed it in the normal office mail and the bid was delivered to the contracting officer on Monday, August 12, 1991. The contracting officer decided to open the bid. Gayle's bid was the lowest of the three bids received and award was made to Gayle on September 11, 1991.

The agency believes the bid was timely delivered because there was no specific office designated in the solicitation, and it arrived in the mail room before the bid opening time. We question whether delivery to the mail room can be considered timely delivery. However, we need not decide that issue because we agree with the agency that, even if the bid was late, the paramount cause of the late delivery was government action and the bid therefore should be considered. Consideration of the bid in this case does not compromise the integrity of the procurement process.

Late bids may be considered only as provided for in the solicitation and pertinent procurement regulations. Chemical Waste Management, Inc., B-215832, Sept. 10, 1984, 84-2 CPD ¶ 274. As the protester points out, the FAR, which was incorporated into the solicitation, provides only for consideration of late bids that meet certain mailing exceptions. Bids, such as the one in this case, sent by Federal Express are considered hand-carried bids (G.M. Coen & Associates, Inc., B-225554, Feb. 12, 1987, 87-1 CPD ¶ 156), and there is no express exception for hand-carried bids. However, the consideration of a late hand-carried bid is permitted where it is shown that the government's action was the paramount cause for the late arrival of the bid at the designated place and the consideration of the bid would not compromise the integrity of the competitive system.

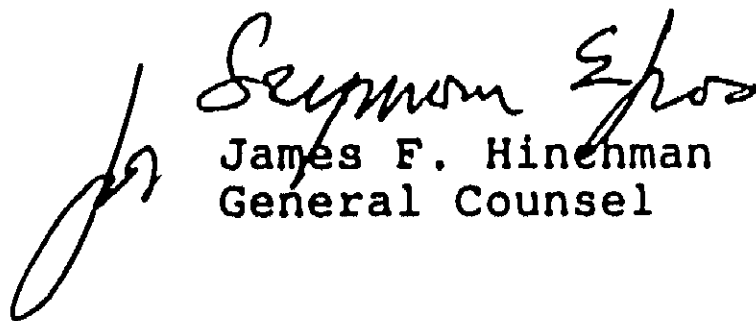
Imperial Maintenance, B-218614, July 26, 1985, 85-2 CPD ¶ 94; Consolidated Marketing Network, Inc., B-217256, Mar. 21, 1985, 85-1 CPD ¶ 330. Although Gayle's bid was late, the record shows that the government caused the bid to be delivered late.

In this case the solicitation did not specify where hand-carried bids were to be delivered. Therefore, it was reasonable for the Federal Express agent to deliver the bid to the mail room. The record shows that the package was clearly marked as a sealed bid and the agency official in charge of transmitting the bid to the contracting officer received the bid 4-1/2 hours prior to bid opening and attempted to follow established transmittal procedures to deliver the bid to the contracting officer in time. However, through an error solely caused by the government, the bid, which could and should have been delivered on time, was in fact delivered late. Therefore, government action was the paramount cause of the late receipt of the bid.

Further, consideration of the bid would not compromise the integrity of the competitive system. We have held that the acceptance of a late bid does not compromise the integrity of the competitive system where it was out of the bidder's hands and in the custody of the agency at the time of bid opening. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. Where, as in the case at hand, a late bid travels through normal agency channels, remaining in the agency's possession and out of the bidder's reach, the integrity of the system is not compromised. Scot, Inc., 57 Comp. Gen. 119 (1977).

Therefore, we concur with the contracting officer's decision to open and consider Gayle's bid.

The protest is denied.


James F. Hinchman
General Counsel